

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CASSANDRA WELCH,)	
)	
Plaintiff,)	
)	Case No. 1:10-cv-1705-LJM-TAB
vs.)	
)	Case No. 1:11-cv-0891-LJM-TAB
ELI LILLY & COMPANY,)	
)	
Defendant.)	
)	

ORDER ON MOTIONS TO QUASH AND COMPEL

Plaintiff Cassandra Welch issued a subpoena from the Southern District of Indiana to non-parties the U.S. Department of Homeland Security and the U.S. Secret Service. Plaintiff also filed a motion to compel the production of the documents requested by the subpoena. The government moved to quash the subpoena for a number of reasons, primarily arguing non-compliance with the *Touhy* regulations. However, the Court need not reach this issue because the subpoena requests production outside the Southern District of Indiana, which renders the subpoena defective. Therefore, the government's motion to quash [Docket No. 52] is granted and Plaintiff's motion to compel [Docket No. 79] is denied.¹

Pursuant to Federal Rule of Civil Procedure 45(a)(2)(c), a subpoena for production or inspection, if separate from a subpoena commanding a person's attendance, must issue "from the

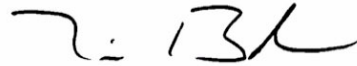
¹With respect to the related case *Welch v. Eli Lilly*, Case No. 1:11-cv-0891-LJM-TAB, in which the parties have filed identical motions, the motion to quash [Docket No. 33] is granted and the motion to compel [Docket No. 52] is denied.

court for the district where the production or inspection is to be made.” In other words, Plaintiff’s subpoena that is separate from a subpoena commanding a person’s attendance is facially invalid because it issued from the Southern District of Indiana and commands production in the District of Columbia. *Hay Grp., Inc. v. E.B.S. Acquisition Corp.*, 360 F.3d 404, 412 (3d Cir. 2004) (“‘Production’ refers to the delivery of documents, not their retrieval, and therefore ‘the district in which the production . . . is to be made’ is not the district in which the documents are housed but the district in which the subpoenaed party is required to turn them over.”); *Schreiber Foods, Inc. v. Indirect Purchaser Plaintiffs*, No. 12-MC-0050, 2012 WL 3301027, at *2 (E.D. Wis. Aug. 13, 2012) (explaining that a subpoena issued from the Eastern District of Wisconsin but requiring production in the Eastern District of North Carolina is facially invalid); *U.S. S.E.C. v. Bravata*, No. 1:11-MC-0006-SEB-MJD, 2011 WL 2133508, at *1 (S.D. Ind. May 27, 2011) (“[P]roduction is to be made . . . in Indianapolis, Indiana. Accordingly, . . . the Southern District of Indiana would be the appropriate court to issue the subpoena.”).

While it is common for a party to offer to accept copies of the requested documents outside the issuing district, the government has not made such an offer and therefore the documents must be produced in accordance with Rule 45(a)(2)(c). *See Schreiber Foods*, 2012 WL 3301027, at *2. Moreover, the Court cannot simply modify the subpoena to require production within the Southern District of Indiana because the defect is jurisdictional. *Id.* Although the parties raise additional issues under the *Touhy* regulations that may arise again if a new subpoena is issued, it is improper for the Court to address those issues at this time since the Court lacks jurisdiction. *Id.* Therefore, the government’s motion to quash [Docket No. 52] is granted and Plaintiff’s motion to compel [Docket No. 79] is denied. With respect to the related

case *Welch v. Eli Lilly*, Case No. 1:11-cv-0891-LJM-TAB, in which the parties have filed identical motions, the motion to quash [Docket No. 33] is granted and the motion to compel [Docket No. 52] is denied.

DATED: 01/16/2013

A handwritten signature in black ink, appearing to read "T. Baker", written over a horizontal line.

Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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